

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

MAGGIE MANIS,

CASE NO.2:08-cv-11710-DPH-SDP

Plaintiff,

HON. DENISE PAGE HOOD

vs.

CONSUMERS CHOICE HEATING
AND COOLING INC., CITICORP
TRUST BANK, FSB,

Defendants.

_____/

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_____/

**DEFENDANT, CITICORP TRUST BANK, FSB'S ANSWER TO
PLAINTIFF'S COMPLAINT, RELIANCE UPON JURY DEMAND
AND AFFIRMATIVE DEFENSES**

NOW COMES Defendant, Citicorp Trust Bank, FSB, by and through its
counsel, PLUNKETT COONEY, and in answer to Plaintiff's Complaint, states as
follows:

1. In response to paragraph one including subparagraphs a through b of Plaintiff's Complaint, Defendant pleads no contest.

2. In response to paragraph two of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

3. In response to paragraph three of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

Jurisdiction

4. In response to paragraph four of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

5. In response to paragraph five of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs. Further, Defendant responds it is a legal conclusion and therefore no answer is required.

General Factual Allegations

6. In response to paragraph six of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

7. In response to paragraph seven of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

8. In response to paragraph eight of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

9. In response to paragraph nine of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

10. In response to paragraph ten of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

11. In response to paragraph eleven of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

12. In response to paragraph twelve of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

13. In response to paragraph thirteen of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

14. In response to paragraph fourteen of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

15. In response to paragraph fifteen of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

16. In response to paragraph sixteen of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

17. In response to paragraph seventeen of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

18. In response to paragraph eighteen of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

19. In response to paragraph nineteen of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

20. In response to paragraph twenty of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

21. In response to paragraph twenty-one of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

22. In response to paragraph twenty-two of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

23. In response to paragraph twenty-three of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

24. In response to paragraph twenty-four of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

25. In response to paragraph twenty-five of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

26. In response to paragraph twenty-six of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

27. In response to paragraph twenty-seven of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

28. In response to paragraph twenty-eight of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

29. In response to paragraph twenty-nine of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

COUNT I – TILA (CCHC and Citicorp)

30. Defendant hereby incorporates by reference its answers to paragraphs one through twenty-nine as if fully set forth herein.

31. In response to paragraph thirty-one of Plaintiff's Complaint, Defendant pleads no contest.

32. In response to paragraph thirty-two of Plaintiff's Complaint, Defendant pleads no contest.

33. In response to paragraph thirty-three of Plaintiff's Complaint, Defendant denies the allegations in the manner phrased because they are untrue.

34. In response to paragraph thirty-four of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

35. In response to paragraph thirty-five of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

36. In response to paragraph thirty-six of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

37. In response to paragraph thirty-seven of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

38. In response to paragraph thirty-eight of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

39. In response to paragraph thirty-nine of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

40. In response to paragraph forty of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

41. In response to paragraph forty-one of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

42. In response to paragraph forty-two of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

43. In response to paragraph forty-three of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

44. In response to paragraph forty-four of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

45. In response to paragraph forty-five of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

46. In response to paragraph forty-six of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

47. In response to paragraph forty-seven of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

COUNT II – Occupational Code

48. Defendant hereby incorporates by reference its answers to paragraphs one through forty-seven as if fully set forth herein.

49. In response to paragraph forty-nine of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

50. In response to paragraph fifty of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

51. In response to paragraph fifty-one of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

52. In response to paragraph fifty-two of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

53. In response to paragraph fifty-three of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

COUNT IV – Michigan Collection Practices Act (Citicorp)

54. Defendant hereby incorporates by reference its answers to paragraphs one through fifty-three as if fully set forth herein.

55. In response to paragraph fifty-five of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

56. In response to paragraph fifty-six of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

57. In response to paragraph fifty-seven of Plaintiff's Complaint, Defendant denies the allegations in the manner phrased because they are untrue.

58. In response to paragraph fifty-eight of Plaintiff's Complaint, Defendant denies the allegations in the manner phrased because they are untrue.

59. In response to paragraph fifty-nine of Plaintiff's Complaint, Defendant denies the allegations in the manner phrased because they are untrue.

60. In response to paragraph sixty of Plaintiff's Complaint, Defendant denies there are any violations of the Collection Practices Act. As to the remaining allegations Defendant neither admits nor denies the same without sufficient information to form a belief and therefore leaves Plaintiff to her proofs.

61. In response to paragraph sixty-one of Plaintiff's Complaint, Defendant denies the allegations in the manner phrased because they are untrue.

62. In response to paragraph sixty-two of Plaintiff's Complaint, Defendant denies the allegations in the manner phrased because they are untrue.

63. In response to paragraph sixty-three of Plaintiff's Complaint, Defendant denies the allegations in the manner phrased because they are untrue.

64. In response to paragraph sixty-four of Plaintiff's Complaint, Defendant denies the allegations in the manner phrased because they are untrue.

65. In response to paragraph sixty-five of Plaintiff's Complaint, Defendant denies the allegations in the manner phrased because they are untrue.

66. In response to paragraph sixty-six, it is a legal conclusion and therefore no answer is required.

67. In response to paragraph sixty-seven of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

COUNT V – Home Solicitation Sales Act (Citicorp and CCHC)

68. Defendant hereby incorporates by reference its answers to paragraphs one through sixty-seven as if fully set forth herein.

69. In response to paragraph sixty-nine of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

70. In response to paragraph seventy of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

71. In response to paragraph seventy-one of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

72. In response to paragraph seventy-two of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

73. In response to paragraph seventy-three of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

74. In response to paragraph seventy-four of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

75. In response to paragraph seventy-five, Defendant admits the allegations contained therein.

76. In response to paragraph seventy-six of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

77. In response to paragraph seventy-seven of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

COUNT IV -- Home Improvement Finance Act (Citicorp and CCHC)

78. Defendant hereby incorporates by reference its answers to paragraphs one through seventy-seven as if fully set forth herein.

79. In response to paragraph seventy-nine of Plaintiff's Complaint, Defendant neither admits nor denies the allegations contained therein for lack of information and leaves Plaintiff to her proofs.

80. In response to paragraph eighty of Plaintiff's Complaint, Defendant admits only those duties imposed by law but denies breach of any said duties.

81. In response to paragraph eighty-one, Defendant denies the allegations in the manner phrased because they are untrue.

82. In response to paragraph eighty-two, Defendant denies the allegations in the manner phrased because they are untrue.

83. In response to paragraph eighty-three, Defendant denies any violation of the Home Improvement Finance Act. As to the remaining

allegations, Defendant neither admits nor denies the same without sufficient information to form a belief.

84. WHEREFORE, Defendant respectfully requests this Court dismiss Plaintiff's Complaint, in total, and further find in favor of Defendant Citicorp a no cause of action.

Plunkett Cooney

By: s/Brian T. McGorisk
Brian T. McGorisk (P44353)
Attorney for Defendant Citicorp
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bmcgorisk@plunkettcooney.com

Dated: July 15, 2008

JURY RELIANCE

NOW COMES Defendant, Citicorp Trust Bank, FSB, by and through its counsel, PLUNKETT COONEY, and do hereby rely upon the previously filed Jury Demand in this matter.

Plunkett Cooney

By: s/Brian T. McGorisk
Brian T. McGorisk (P44353)
Attorney for Defendant Citicorp
Plaza One Financial Center
111 E. Court St., Ste. 1B
Flint, MI 48502
(810) 342-7005
bmcgorisk@plunkettcooney.com

Dated: July 15, 2008

AFFIRMATIVE DEFENSES

NOW COMES Defendant, Citicorp Trust Bank, FSB, by and through its attorneys, Plunkett Cooney, and states the following Affirmative Defenses:

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiff's claims may be barred in whole or in part as a result of a bona fide error.
3. Plaintiff's claims may be barred in whole or in part by estoppel, waiver, laches and/or unclean hands.
4. Defendant reserves the right to amend and/or modify the affirmative defenses as necessitated by further discovery and/or investigation.

Plunkett Cooney

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Dated: July 15, 2008

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2008, Answer to Complaint on Behalf of Citicorp Trust Bank, FSB, Reliance Upon Jury Demand and Affirmative Defenses was served upon N/A via first class mail, postage prepaid and that this Certificate of Service is being with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Brian T. McGorisk, Ian Lyngklip and David Merchan. I declare under the penalty of perjury that the statement above is true to the best of my knowledge, information and belief.

s/Brian T. McGorisk
Brian T. McGorisk (P44353)
Attorney for Defendant Citicorp
Plaza One Financial Center
111. E. Court St., Ste. 1B
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Dated: July 15, 2008

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